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 15 Chapter 11 Trustee

16 **UNITED STATES BANKRUPTCY COURT**

17 **DISTRICT OF NEVADA**

11 In re:	CASE NO. BK-21-14978-ABL	
12 SILVER STATE BROADCASTING, LLC,	Chapter 11	
13 AFFECTS THIS DEBTOR	<input type="checkbox"/>	<i>Jointly Administered with:</i>
14 AFFECTS GOLDEN STATE	<input type="checkbox"/>	Golden State Broadcasting, LLC
15 BROADCASTING, LLC		Case No. 21-14979-ABL
16 AFFECTS MAJOR MARKET	<input type="checkbox"/>	Major Market Radio, LLC
17 RADIO, LLC		Case No. 21-14980-ABL
AFFECTS ALL DEBTORS	<input checked="" type="checkbox"/>	<u>Hearing Date: OST Requested</u>

18 **EMERGENCY MOTION FOR MODIFICATION OF THE AUTOMATIC STAY OR, IN**
19 THE ALTERNATIVE, RELIEF FROM CURRENT STAY MODIFICATION ORDER
20 AND TO REINSTATE AUTOMATIC STAY

21 Michael Carmel, as the Chapter 11 trustee (“Trustee”) of the bankruptcy estates of debtors
 22 Silver State Broadcasting, LLC, Golden State Broadcasting, LLC and Major Market Radio, LLC
 23 (collectively, the “Debtors”), hereby applies to this Court for entry of an order further modifying
 24 the automatic stay pursuant to 11 U.S.C. § 362, as to creditor C & E Haas Development Company,
 25 LLC (“C&E”), or in the alternative, affording the Trustee relief from the Court’s *Order Granting*
 26 *in Part and Denying in Part Motion* [ECF No. 436]¹ (“Stay Relief Order”) pursuant to Bankruptcy
 27

28 ¹ All references to “ECF No.” are to the numbers assigned to the documents filed in the lead jointly administered

1 Rule 9024, which Stay Relief Order previously modified the automatic stay as to C&E. This
 2 motion (the “Motion”) is made and based upon the points and authorities provided herein; the
 3 declaration of Chapter 11 Trustee Michael Carmel, Esq. (“Carmel Decl.”), filed
 4 contemporaneously herewith pursuant to Local Rule 9014(c); as well as the papers and pleadings
 5 on file herein, judicial notice of which is respectfully requested pursuant to FED. R. EVID. 201(b)
 6 and (c) and 1101(a) and (b); and any argument of counsel entertained by the Court at the time of
 7 the hearing on the Motion.

8 **I.**
 9 **INTRODUCTION**

10 Michael Carmel was very recently appointed as the Chapter 11 Trustee for these Debtors.
 11 Since his appointment, he has been seeking turnover of the Debtors’ books and records, to
 12 determine the extent of the Debtors’ assets, evaluating how to best generate revenue for these
 13 Debtors, and the appropriate sale process to maximize value. The Trustee expects to bring before
 14 this Court a programming agreement that will generate revenue for the Debtors pending a sale.
 15 The FM radio station at 92.7 FM, call sign KREV, which is subject to the Lease, is a material
 16 component of any such programming agreement and sale.

17 C&E is currently able to terminate the automatic stay on an *ex parte* basis if certain
 18 payments are not made on April 1, 2023. As the Trustee was very recently appointed, this Motion
 19 is brought on an emergency basis to ensure that the estates do not lose a valuable asset – the FM
 20 radio station at 92.7 FM, call sign KREV – until the Trustee has sufficient time to effectuate his
 21 duties as the Chapter 11 trustee.

22 **II.**
 23 **PERTINENT FACTS**

24 1. Prepetition, Golden State Broadcasting, LLC (the “Golden State Debtor”) entered
 25 into a Transmitter Site Use Agreement with Golden State Broadcasting, LLC (the “Lease”), which
 26 Lease provides for the Golden State Debtor to utilize non-residential real property consisting of a

27 bankruptcy case, Bankr. D. Nev. Case No. 21-14978-ABL (“Lead Case”) as they appear on the Lead Case docket
 28 (“Docket”) maintained by the Clerk of Court of the United States Bankruptcy Court for the District of Nevada. The
 bankruptcy cases jointly administered under the Lead Case are referenced, collectively, as the “Bankruptcy Cases”.

1 transmitter site located at 1 Bayview Park Road, San Francisco, California (the “Site”), for use as
 2 an auxiliary transmitter site for radio broadcast station KREV.

3 2. From a review of the Docket, it appears that a copy of the Lease has previously
 4 been submitted to the Court under seal, pursuant to stipulation by and between C&E and the
 5 Debtors. *See* ECF Nos. 281, 284. In an abundance of caution, therefore, no copy of the Lease is
 6 attached hereto.

7 3. On October 19, 2021 (the “Petition Date”), the Debtors filed their voluntary
 8 petitions for relief under Chapter² 11 of the Bankruptcy Code, thereby commencing the above-
 9 captioned bankruptcy cases (collectively, the “Chapter 11 Cases”). *See, e.g.*, ECF No. 1.

10 4. On November 19, 2021, this Court entered its *Order Authorizing Joint*
 11 *Administration of Cases* [ECF No. 37], directing that “the Chapter 11 case of SILVER STATE
 12 BROADCASTING, LLC (Case No. 21-14978-abl), shall be jointly administered with the Chapter
 13 11 cases of GOLDEN STATE BROADCASTING, LLC (Case No. 21-14979-abl) and MAJOR
 14 MARKET RADIO LLC (Case No. 21-14980-abl), with SILVER STATE BROADCASTING,
 15 LLC designated as the Lead Case (“Lead Case”), and all papers relating to the above referenced
 16 Debtors shall be docketed in the Lead Case (Case No. 21-14978-abl)[.]” *See* ECF No. 37 at p. 2
 17 of 4.

18 5. On October 19, 2022, this Court entered its *Order Granting in Part and Denying*
 19 *in Part Motion* [ECF No. 346] (“Stay Relief Order”).

20 6. *Inter alia*, the Stay Relief Order granted relief from the automatic stay to C&E as
 21 follows:

22 **IT IS ORDERED** that the Motion is **GRANTED IN PART** and **DENIED**
 23 **IN PART**.

24 1. The Motion is **GRANTED** to the extent that it seeks relief from the
 25 automatic stay for cause under 11 U.S.C. §362(d)(1), and automatic stay

26 2 All references to “Section” herein shall be to the Bankruptcy Code appearing in Title 11 of the
 27 U.S. Code; all references to “Bankruptcy Rule” shall refer to the Federal Rules of Bankruptcy
 28 Procedure; all references to “Civil Rule” shall refer to the Federal Rules of Civil Procedure; and
 all references to a “Local Rule” shall refer to the Local Rules of Bankruptcy Practice of the U.S.
 District Court for the District of Nevada.

1 shall remain in effect subject to each and all of the following conditions:

2 * * *

3 c. As additional adequate protection under 11 U.S.C. §§ 362(d)(1) and
 4 361(a)(1) going forward, Golden State shall remit to Haas Development the
 5 full contractual Basic Payment amount[] and any adjustments thereto[]
 6 when due each month under the terms of the Agreement during the
 7 pendency of this case prior to confirmation; and

8 * * *

9 e. Should Golden State fail to timely and fully satisfy any of these
 10 conditions, upon the filing of an *ex parte* motion by Haas Development,
 11 supported by admissible evidence, the automatic stay shall terminate
 12 without further notice or opportunity for hearing.

13 *See Stay Relief Order, ECF No. 346 at 2:15 to 3:10 (emphases as in original).*

14 7. On March 6, 2023, this Court entered its *Order on United States Trustee's Motion*
 15 *to Appoint Chapter 11 Trustee Under 11 U.S.C. § 1104(a), or, in the Alternative, to Convert Cases*
 16 *to Chapter 7 Pursuant to 11 U.S.C. § 1112(b); and Memorandum of Point and Authorities in*
 17 *Support and Reservation of Rights [ECF No. 405], and Creditor Mincin Law, PLLC's Motion for*
 18 *Appointment of Chapter 11 Trustee [ECF No. 393]*, thereby directing the appointment of a Chapter
 19 11 trustee for the Debtors' estates. *See ECF No. 419.*

20 8. On March 10, 2023, Tracy Hope Davis, the United States Trustee for Region 17,
 21 appointed the Trustee as the Chapter 11 trustee for Debtors' estates. *See ECF No. 420.*

22 9. On March 10, 2023, the Court entered its *Order Approving Appointment of Chapter*
 23 *11 Trustee [ECF No. 422]*, thereby approving the Trustee's appointment.

24 10. On March 13, 2023, the Trustee filed his *Notice of Acceptance of Appointment of*
 25 *Chapter 11 Trustee*, accepting his appointment as the Chapter 11 trustee for the Debtors' estates.
 26 *See ECF No.424.*

27 11. Shortly after his appointment, the Trustee demanded turnover of the Debtors' books
 28 and records from both Debtors' former counsel and Mr. Stolz. Yesterday, Debtors' former counsel
 29 provided a copy of the Lease and advised that the next monthly payment on behalf of the Golden
 30 State Debtor is April 1, 2023 ("April Payment"). *See Carmel Decl. ¶ 4.*

1 12. The Trustee's investigation is just beginning; however, from his initial review of
 2 the scant materials that have been turned over since his appointment, it appears that the Golden
 3 State Debtor does not have sufficient funds to make the April Payment. Specifically, after repeated
 4 requests, yesterday, I received draft monthly operating reports signed by Mr. Stolz for November
 5 2022, December 2022, and January 2023. As of January 31, 2023, the bank statement reflects
 6 \$4,487.13. *See* Carmel Decl. ¶ 5.

7 13. The Trustee's preliminary investigations also indicate that the FM radio station at
 8 92.7 FM, call sign KREV ("SF Radio Station"), signal for which is transmitted at the Site, may be
 9 a valuable assets of the Debtors' estates. *See* Carmel Decl. ¶ 6.

10 14. The Trustee is in discussions regarding a programming agreement for among
 11 others, the SF Radio Station, which (if approved by the Court) will generate revenue for the
 12 Debtors' estates in the short term, which would allow the Trustee to make post-petition payments
 13 under the Lease. *See* Carmel Decl. ¶ 7.

14 15. Additionally, the Trustee has already had conversations with potential purchasers
 15 expressing interest in acquiring one or more of the Debtors' assets and, therefore, is in the process
 16 of formulating bidding procedures for a potential 11 U.S.C. § 363 auction and sale process to
 17 generate revenue for the Debtors' estates. *See* Carmel Decl. ¶ 8. However, successfully closing
 18 on any sale of assets of the Debtors will take time.

19 16. Although the stay relief order modified the automatic stay as to C&E, in the event
 20 the Golden State Debtor "fail[s] to timely and fully" remit the next monthly payment due to C&E,
 21 the automatic stay "shall terminate without further notice or opportunity for hearing[]" upon the
 22 filing of an *ex parte* motion by C&E (supported by admissible evidence). *See* Stay Relief Order
 23 ECF No. 346 at 3:7-10.

24 17. To date, C&E has not filed its *ex parte* motion. *See* Docket.³

25
 26

³ Counsel for the Trustee and C&E have a call scheduled on April 3, 2023, to discuss the Lease.
 27 The Trustee is hopeful this stay relief issue can be consensually resolved. However, because the
 28 Stay Relief Order provides for *ex parte* relief and potential harm to the Estates, it was necessary
 to immediately file this Motion.

18. As the Trustee was appointed merely weeks ago, the Trustee needs additional time to evaluate the Lease and determine its value to the estates and necessity in connection with any sale.

III. JURISDICTION AND VENUE

19. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B), (G), and (O). Venue of the Debtors' Chapter 11 Cases in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Application is a "core proceeding" over which the Court has jurisdiction to render a decision.

20. The statutory bases for the relief sought herein arise from Sections 362 and 105 of the Bankruptcy Code and Bankruptcy Rule 9024.

21. Pursuant to Local Rule 9014.2, the Trustee consents to entry of final order(s) or judgment(s) by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders for judgment consistent with Article III of the United States Constitution.

IV.

A. Modification of the Automatic Stay Under Section 362(d) Is Warranted to Allow the Trustee an Opportunity to Generate Revenue From the SF Radio Station to Pay Creditors.

22. U.S.C. § 362(d)(1) provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay— (1) for cause, including the lack of adequate protection of an interest in property of such party in interest[.]

23. Here, the Court's Stay Relief Order previously modified the automatic stay as to creditor C&E, to provide that, *inter alia*, the Golden State Debtor shall, as adequate protection, "remit to [C&E] the full contractual Basic Payment amount[] and any adjustments thereto[] when due each month under the terms of the Agreement during the pendency of this case prior to

1 confirmation[.]” *See* Stay Relief Order ECF No. 346 at 2:26 to 3:3 (footnotes omitted⁴). The Stay
 2 Relief Order also provides C&E with a mechanism to terminate the automatic stay in the event the
 3 Golden State Debtor fails to timely and fully satisfy the requirement of ongoing adequate
 4 protection payments. *See id.* at 3:7-10.

5 24. As of the filing of this Motion, the automatic stay has not been terminated. *See*
 6 Docket. However, the Trustee is advised that the Golden State Debtor’s deadline to make the April
 7 Payment will pass this weekend, on or about April 1, 2023. *See* Carmel Decl. ¶ 4.

8 25. Cause exists to further modify the automatic stay pursuant to 11 U.S.C. § 362(d)(1),
 9 because the Trustee was appointed in the time between the due dates for consecutive monthly
 10 adequate protection payments owed to C&E (March 1, 2023, and April 1, 2023). *See* Docket.

11 26. As such, the April Payment is the very first such adequate protection deadline the
 12 Trustee is encountering.

13 27. Cause also exists to modify the automatic stay to afford the Trustee breathing room
 14 to generate immediate revenue for the Debtors’ estates by negotiating a programming agreement
 15 and, separately, to generate and long-term value for the Debtors’ estates through a robust auction
 16 and sale process that includes one of the Debtors’ most valuable assets (the SF Radio Station,
 17 broadcast at the Site).

18 28. If the April Payment deadline passes without timely payment, the Estate runs the
 19 risk of potentially losing a valuable asset through termination of the automatic stay.

20 29. Therefore, the Trustee requests the Court further modify the automatic stay in these
 21 Chapter 11 Cases, as to C&E **only**, to provide that the automatic stay remains in place regardless
 22 of the timing of the April Payment and any monthly payments due thereafter pursuant to ¶ 1.c. of
 23 the Court’s Stay Relief Order (collectively, the “Paused Payments”), and that the C&E shall have
 24 an administrative expense claim **as to any Paused Payments**, which administrative expense claim

25
 26
 27 4 Footnotes 2 and 3 of the Court’s Stay Relief Order reference Sections 5.1 and 5.2 of the
 28 Agreement, respectively. *See* ECF No. 346 at p. 3 of 3.

1 shall be paid by the Trustee within ten (10) business days of the Debtors' estates having sufficient
 2 funds to pay the Paused Payments.⁵

3 **B. In the Alternative, the Trustee Requests Relief From the Stay Relief Order Pursuant**
to FED. R. BANKR. P. 9024.

4 30. Bankruptcy Rule 9024 provides that, except in certain circumstances inapplicable
 5 here, "Rule 60 F.R.Civ.P. applies in cases under the Code . . ."

6 31. Civil Rule 60(b) provides in pertinent part, "On motion and just terms, the court
 7 may relieve a party or its legal representative from a final judgment, order, or proceeding for the
 8 following reasons: . . . (6) any other reason that justifies relief."

9 Under Civil Rule 60(b), the bankruptcy court can relieve a party
 10 from a final order for the following reasons:

- 11 (1) mistake, inadvertence, surprise, or excusable neglect;
- 12 (2) newly discovered evidence that, with reasonable diligence, could
 not have been discovered in time to move for a new trial under Rule
 59(b);
- 13 (3) fraud (whether previously called intrinsic or extrinsic),
 misrepresentation, or misconduct by an opposing party;
- 14 (4) the judgment is void;
- 15 (5) the judgment has been satisfied, released, or discharged; it is
 based on an earlier judgment that has been reversed or vacated; or
 applying it prospectively is no longer equitable; or
- 16 (6) any other reason that justifies relief.

17 *In re Nations First Capital, LLC*, 2020 WL 3071983, *5 (B.A.P. 9th Cir. June 5, 2020).

18 32. Here, the only applicable provision for the relief requested is Civil Rule 60(b)(6).
 19 Relief is justified here because there are significantly changed circumstances in the Chapter 11
 20 Cases since the time the Stay Relief Order entered, the most impactful of which is the Trustee's
 21 appointment over the Debtors' estates.

22

23

24

25 ⁵ For clarity and the avoidance of doubt, the Trustee takes no position respecting assumption or
 26 rejection of the Lease, nor does the Trustee take any position at this time with respect to any proof
 27 of claim filed by C&E. The relief requested herein is without prejudice to addressing such issues
 as they arise in connection with case administration in the ordinary course in these Chapter 11
 28 Cases. This Motion is brought solely to address the immediate, emergency impending risk of loss
 the Estate faces in the event the stay is terminated as to the Site at a time when the Trustee is
 working diligently to generate immediate revenue.

1 33. “[A] court may reconsider its own order granting relief from stay.” *In re Rodriguez*
 2 *Camacho*, 361 B.R. 294, 300 (B.A.P. 1st Cir. 2007) (citations, footnote, and internal quotations
 3 omitted).

4 34. The Trustee has been contacted by potential purchasers expressing interest in
 5 acquiring one or more of the Debtors’ assets and, therefore, is in the process of formulating bidding
 6 procedures for a potential 11 U.S.C. § 363 auction and sale process to generate revenue for the
 7 Debtors’ estates. *See* Carmel Decl. ¶ 8.

8 35. Although the Trustee is less than three weeks into his appointment in these Chapter
 9 11 Cases, his investigations indicate that the SF Radio Station, whose signal is transmitted at the
 10 Site, is a valuable assets of the Debtors’ estates. *See* Carmel Decl. ¶ 6.

11 36. The Trustee is negotiating a programming agreement, which includes the SF Radio
 12 Station, that if approved by the Court will generate revenue for the Debtors’ estates in the very
 13 near future. *See* Carmel Decl. ¶ 7.

14 37. Specifically, the Trustee asks this Court to amend the language of ¶ 1.c. of the Stay
 15 Relief order as follows:

16 *from:*

17 As additional adequate protection under 11 U.S.C. §§ 362(d)(1) and
 18 361(a)(1) going forward, Golden State shall remit to Haas
 19 Development the full contractual Basic Payment Amount [fn2: As
 20 defined in Section 5.1 of the Agreement] and any adjustments
 21 thereto [fn3: As defined in Section 5.2 of the Agreement] when due
 22 each month under the terms of the Agreement during the pendency
 23 of this case prior to confirmation; and

24 *to:*

25 As additional adequate protection under 11 U.S.C. §§ 362(d)(1) and
 26 361(a)(1) from and after April 1, 2023, Haas Development shall
 27 have an allowed administrative expenses claim in the amount of the
 28 contractual Basic Payment Amount pursuant to Section 5.1 of the
Agreement plus any adjustments pursuant to Section 5.2 of the
Agreement (but not for attorney fees, interest, or other fees not
expressly allowed pursuant to Sections 5.1 and 5.2 of the
Agreement), for any monthly payments from and after April 1,
2023, which are not paid in fully on the date due (collectively,
“Paused Payments”), which Paused Payments shall be payable by

the appointed Chapter 11 Trustee within ten (10) business days of the Debtors' estates having sufficient funds to make Paused Payments during the pendency of this case prior to confirmation; and

C. To the Extent the Automatic Stay Is Terminated as of the Hearing on This Motion, Reinstatement of the Automatic Stay Is Appropriate

38. Although the automatic stay has not been terminated as of the filing of this Motion, the terms of the Stay Relief Order appear to provide C&E with a mechanism to seek stay termination between the filing of this Motion and any hearing the Court conducts on this Motion. As such, in the event the automatic stay is terminated before a hearing can be held on this instant Motion, the Trustee respectfully requests this Court conduct a hearing on this Motion and reinstate the automatic stay to the extent the stay may at that time be terminated.

39. “[A] party may seek relief from a bankruptcy court order lifting the automatic stay by filing amotion pursuant to Rule 9024 and 60(b) . . .” *In re Gledhill*, 76 F.3d 1070, 1079 (collecting cases). For the reasons and analysis set forth herein respecting Bankruptcy Rule 9024, the Trustee requests that the automatic stay be reinstated as to creditor C&E.

V. CONCLUSION

WHEREFORE, the Trustee respectfully requests the Court modify the automatic stay under Section 362 as set forth herein, or, in the alternative, grant the Trustee relief from the Stay Relief Order by modifying the order's language as set forth herein. In the event the automatic stay has been terminated as of the hearing on this Motion, the Trustee requests the automatic stay be reinstated.

Dated this 31st day of March 2023.

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